THE NEED OF COPYRIGHT REFORM.

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It may not be uninteresting to briefly investigate some of the more flagrant anomalies of the copyright laws which obtain in the United States and England. Sooner or later we believe the time will come when a code largely common to the two countries will be formulated, and we think there is little in the way of unity of action. The needs of authors and of the owners of copyrights in the United States and England are practically identical. What we require is a simple and clear enunciation of what copyright is, how it is created, and how it is protected; a ready means of elucidating dealings with it so that these shall be certain and clear. There can be no question whatever that an immense and a growing interest is being injuriously affected by the doubts, delays, and difficulties which surround the most simple transactions to which copyright is incidental. Some of these are, perhaps, inevitable, but many, if not most, will undoubtedly be removed, as they have been removed in the case of other vocations involving at least as complicated incidents.

Let us take, for instance, the term for which copyright endures. There is no reason whatever why a uniform term should not be agreed upon by the united voice of the world. By English common law, it is the opinion of many, that an author's copyright, prior to the Act of Anne, the first of the copyright Acts, was a perpetual right and endured for all time. In America there is, it is argued, no common law at all and the right was never anything else but statutory. For it is not possible to regard copyright as having had any existence in the States prior to the Constitution of 1786, or the first Copyright Act of 1790.

We must disregard the local laws of Connecticut, Massachusetts, Virginia, New York, New Jersey, and those other States which distinguished themselves by early copyright legislation. The Act of Congress of 1790 followed almost in terms the British statute of 1709. It gave to the author the same term of protection, for it was not until 1831 that this was extended by a right of renewal to author or his widow or children for a third term of fourteen years. This limit has remained unaltered, so that America stands in the position of conferring upon authors the shortest term known to any civilized country. Many successful American authors live to see some of their works common property, so that they would be better off in Japan. English copyright enjoys shorter protection than that of any other language. Spain and Italy are not regarded as very enlightened countries, but the former since 1879 has given life and eighty years, while the latter adds to a period enduring for life and forty years the right to a five per cent. royalty from all publishers for a further term of forty years.

A lively controversy has raged round all these terms. There is the school which holds the opinion very strongly that an author is not entitled to any protection at all, and there is the school which holds the ultra view, that an author is entitled as of right to perpetual copyright, and there are the means between these two extremes. The verdict of all the interests concerned is in favor of a common term, and it is widely held that this should be a mean between the periods prevailing, that is, life and thirty years, the term recommended by the Copyright Commissioners of Great Britain in 1878.

The first thing, therefore, for American reformers to take in hand, is the lengthening of the term in the United States, so that it should come into line with that prevailing in other countries. It is hardly fair reciprocity to give only the limited copyright now prevailing in America. As the law stands a British, or any other, author, acquiring a good American copyright, and dying just before the expiration of twenty-eight years, would not be able to leave any property behind him at all unless he had a widow and children.

Moreover, is it not ludicrous that the legislation of the United States should rest upon an obsolete statute of the reign of Queen Anne, and not upon established principles? Certain rash

writers have taken it into their heads to refer to the Act of Anne as being the cornerstone of English copyright law. It is difficult to discuss the question on that premise. The act was passed solely on the initiative of the Stationers' Company, whose members having at that time "fifty thousand pounds invested in copyrights," missed the remedies provided by the Licensing Acts, which had been abrogated in consequence of the triumphs of the constitutional objections to the principle of a censorship which had existed since Milton's day.

It was during its passage through Parliament that this "Act for the Encouragement of Learning" emasculated the law by giving future writers certain remedies for a term of years. Sixty years later it was decided by the House of Lords that the act was substitutionary and not cumulative, and that it had taken away all the old common law rights. In its penal sections the act followed with servile exactitude the Parliamentary Order of 1643, and the Licensing Act of 1662. The term fixed by the act was deliberately copied from the Statute of Monopolies of James I., not by reason of any analogy, but as a convenient period for an experimental remedy to run.

Now, can anything more absurd be conceived than that the copyright law of America should have been built upon a misapplied act of James I., unless it be the contention that the mistake established the truth of the principle that copyright is a monopoly?

Instances without number have been given of the injustice worked by the shortness of the term allowed by the American copyright law to authors. In the case of Washington Irving most of his better known works were out of copyright during his lifetime, but he could not even leave his nieces any claim to a renewal of the rights in his great "Life of Washington," which was only completed in the year of his death. Fenimore Cooper, too, lived to see many of his rights pass into the public domain. Lowell saw his early works become public property long before he died; so did Oliver Wendell Holmes, who enjoyed the pleasure of seeing his earliest efforts sold as "Holmes' Poems." Whittier underwent the same personal experience, and so did Bancroft, the earliest volumes of the first edition of whose "History of the United States" became public property in 1876 and 1879, while the copyright in the whole work expired in 1882.

Now, this is an obvious injustice, whatever may be said for or against the rights of authorship; the least that can be allotted to an author is protection during his life. The time is not far distant when the public verdict will be declared in favor of one uniform term which will secure to an author an adequate recompense and insure the return to honest literary endeavor that is not insured under our present imperfect and heterogeneous systems.

Next to the duration, if not before it, come what have been styled the investitive facts of copyright. No doubt a great stride towards uniformity has been made by the signatory states of the Berne Convention. The conferring of equal benefits with natives upon the authors of all the works of any of the states which have adhered to the convention on compliance with the conditions necessary in the "country of origin" renders absolute community in practice *pro tanto* unnecessary. The adhesion of the United States to the convention would mark an epoch in the history of intellectual property of unexampled importance; but that event seems destined to be postponed for a long while to come, and meanwhile it is eminently desirable for some common basis of practice to be agreed upon as to the acts conditional to copyright.

As things are, it is all chaotic. Registration, where it exists, and is conditional as in America, is a cut and dried formula, and it is generally more or less clear what are the required forms to be gone through. But is registration sufficient to secure a United States copyright? Is not publication also a condition precedent? Copyright in Great Britain is a more difficult *crux*. There are not, so far as we are aware, any precedents existing in any country to elucidate the point as to what constitutes publication. Thus a practice has sprung up of publishing *pro forma* which is, if you think of it, a contradiction in terms. For surely publication must imply a dedication to the public use, and publication *pro forma* can be nothing of the kind. Registration, as we have said, is an ascertainable fact. But registration may not be "good." As a matter of practice it is often bogus, and so you get a register, supposed to be conclusive evidence of title to valuable property, which is full of bogus entries. Then again the deposit of copies as provided for in nearly all countries is a tax. In Great Britain five copies may be required, one for the British

Museum, and one for each of the four libraries designated in the Act, if they call for them. In America, Belgium, France, Greece, Holland, Italy, Portugal, Switzerland, Canada, two copies are required; in Spain and Bolivia, three copies, and in Venezuela four copies, and so on. Now, surely in the interests of literature this should be adjusted. If one copy only of any work were deposited at the National Library of each country in which copyright was sought, it should suffice to justify the claim of protection. The question is full of difficulty, and any conceivable machinery is liable to work badly, but nothing could be more mischievous than the present system, or want of system.

America has the advantage of Great Britain in having established a practical uniformity for the different classes of copyright. To take the words from the statute, "maps, charts, musical or dramatic compositions, engravings, cuts, photographs, paintings, drawings, chromos, statuary, and models or designs, if intended to be perfected as works of fine art," come within the same rules as books, as far as these are applicable. But American law has no definition of the word "book."

Now in England the case is very different. Not even is the term the same. In music, lectures, engravings, paintings, statuary, it varies and rests upon such distinct statutory rules as to give rise to the impression that there are different kinds of copyright. Then, again, take registration (which in the United States is uniformly essential); for books in England it is optional, for paintings, drawings, and photographs compulsory; with statuary, again, it appears to be unnecessary to register at all since 1883, nor is any registration required to protect the copyright of an engraving. It is idle to generalize. Each case can only be dealt with as it arises, and in view of the facts, statutes, and precedents; but can a more complete muddle be conceived than the problem before anyone desiring to comply with the law in both countries? It calls for a jury of experts to say what are the necessary investitive acts to be performed. In the case of music and any of the forms of artistic work the present system is monumentally chaotic. In other words, instead of the matter being simple and sure, it is full of difficulty and doubt, highly complicated and in large part unsettled and uncertain. Not even the judges themselves are clear as to the meaning of the statutes they have to interpret.

English and American reformers should give their lawmakers

no peace until they have individually obtained a code which shall be homogeneous and clear, dealing with all branches which make up this wide question. It should be within the power of every man to ascertain without loss of time or money the nature of the rights which he acquires for his artistic work, whatever shape it may take, and how to protect those rights.

If we turn from the incidents of copyright to the remedies for its infringement, we are in a more parlous case still. Both in England and America the position of a copyright owner is an unenviable one. One of the most simple remedies in theory known to English equity, an injunction to restrain a man from doing an act which he has no right to do, is in practice like playing with a boomerang. Anyone attempting to restrain an offender by an application of this character, after a long investigation involving an intolerable expense, stands a good chance of ascertaining that he ought to have pursued some other remedy. In short, in the present state of English practice, nobody knows until it is all over whether an injunction is the right remedy or not. It is said that there is a growing reluctance on the part of judges to grant injunctions; there is certainly likely to be a growing reluctance to apply for them. An action for damages in a copyright matter, again, can only be described as a luxury. Further, it is no doubt annoying to its owner to see a garbled version of a monumental work set before the public; but we doubt whether it would not be more annoying to him to have to pursue such a remedy as an action for libel, which is what the English precedents indicate to be the only legitimate course.

In the same way in the United States the course of litigation does not seem to be very much smoother. The total absence of any intercommunication between the executive branch which has the control of copyright matters and the judicial authority is perhaps inevitable; but it is certainly not generally understood that the functions of the Librarian of Congress are purely mechanical, involving no question of discretion and conferring no rights not subject to review. The United States Court has enriched the law of copyright by many most valuable decisions; but, to say the least, the process of obtaining the decisions of that tribunal seems to be not a little tedious. The reported cases which have come up for decision under the act of 1891, for instance, serve sufficiently to illustrate that the methods of American

courts differ little from those of English courts in point of certainty and dispatch.

Now, to dismiss the question of procedure in a few words, it must be confessed that the majority of cases of infringement are very trivial. The improper use of a copyright photograph, the illicit performance of a dramatic piece, the piracy whether in whole or in part of a copyright book, are all acts that could be dealt with in a summary manner, and punished (without prejudice to the pursuit of other and further remedies if desired) by a moderate penalty. The truth is that offenders have so long enjoyed comparative immunity on account of the intricacy and inevitable delay of legal proceedings that they often snap their fingers at the law, secure in the belief that they will not be disturbed in the enjoyment of their illicit gains. Now, if in both countries the tortuous procedure which belongs from time immemorial to the settlement of points of law were supplemented by a summary process capable of review, so as to obviate any miscarriage of justice, the game would not be worth the candle, and copyright owners would come by their own.

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